

EXHIBIT 1

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VALLEY; FAIR HOUSING FOUNDATION; FAIR HOUSING NAPA VALLEY and INLAND
FAIR HOUSING & MEDIATION BOARD

UNITED STATES DISTRICT COURT

NORHTERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ISMAEL JIMENEZ, YOLANDA JIMENEZ,)	CASE NO. 5:16-CV-4434-EJD
ANGELES JIMENEZ, ANTONIO)	
JIMENEZ, CARMENTINA HERRERA,)	CORRECTED BRIEF OF AMICI
LUIS ALVAREZ, EBARISTO ALAVEZ,)	CURIAE NATIONAL FAIR HOUSING
JOSEFA JIMENEZ, JESUCITA ORTIZ,)	ALLIANCE; HOUSING RIGHTS
RODOLFO ROBLES, and PROJECT)	CENTER; EDEN COUNCIL FOR HOPE
SENTINEL, a California non-profit)	AND OPPORTUNITY; FAIR HOUSING
corporation, on behalf of itself and the general)	ADVOCATES OF NORTHERN
public,)	CALIFORNIA; FAIR HOUSING
)	COUNCIL OF ORANGE COUNTY;
Plaintiffs,)	FAIR HOUSING COUNCIL OF
)	RIVERSIDE, INC.; FAIR HOUSING
v.)	COUNCIL OF THE SAN FERNANDO
)	VALLEY; FAIR HOUSING
DAVID TSAI, UNDINE TSAI, and SHANG)	FOUNDATION; FAIR HOUSING NAPA
SHEN,)	VALLEY and INLAND FAIR HOUSING
)	& MEDIATION BOARD IN SUPPORT
Defendants)	OF PLAINTIFF PROJECT SENTINEL'S
)	OPPOSITION TO DEFENDANTS'
)	MOTION TO DISMISS

Date: October 5, 2017
Time: 9:00 a.m.
Room: Courtroom 4, 5th Floor
Courtroom of the Hon. Edward J. Davila

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INTERESTS OF AMICI CURIAE

1 The National Fair Housing Alliance, Inc. (“NFHA”) is a non-profit corporation that
 2 is dedicated to ending discrimination in housing. NFHA represents approximately 75
 3 private, non-profit fair housing organizations throughout the country. NFHA and its
 4 members work to ensure equal housing opportunities for all people in their communities and
 5 engage in efforts to end segregation. Relying on the Fair Housing Act and Supreme Court
 6 standing decisions interpreting it, NFHA and its members have undertaken important
 7 enforcement initiatives in cities and states across the country including California. They
 8 regularly educate the housing, lending and insurance industries to comply with the Fair
 9 Housing Act, accept and investigate complaints alleging housing discrimination and
 10 participate as plaintiffs in federal and state court litigation brought under federal and state
 11 fair housing laws. NFHA and its members’ efforts have contributed significantly to the
 12 nation’s efforts to eliminate housing segregation and discriminatory housing practices.

13 Located in Los Angeles, the Housing Rights Center is the largest organization in
 14 California dedicated to ending housing discrimination and a member of NFHA. To achieve
 15 its goal of ending housing discrimination, the Housing Rights Center actively promotes and
 16 supports fair housing in the communities it serves through education, advocacy, and
 17 enforcement.

18 Eight other NFHA members located in California join NFHA and Housing Rights
 19 Center as amici curiae. Eden Council for Hope and Opportunity; Fair Housing Advocates of
 20 Northern California (formerly Fair Housing of Marin); Fair Housing Council of Orange
 21 County; Fair Housing Council of Riverside County, Inc.; Fair Housing Council of the San
 22 Fernando Valley; Fair Housing Foundation; Fair Housing Napa Valley and Inland Fair
 23 Housing and Mediation Board (“Amici”) are non-profit, public interest fair housing
 24 organizations located in communities throughout California.

25 The Supreme Court and appellate courts have for decades upheld the
 26 standing of fair housing organizations such as Amici to bring lawsuits under the Fair
 27 Housing Act. *See, e.g., Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Fair*
 28

1 *Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002).

2 Amici's interests will be adversely affected by a decision imposing greater burdens
3 on fair housing organizations to establish standing at the motion to dismiss stage. As
4 discussed in greater detail below, granting the motion to dismiss Project Sentinel
5 significantly curtails the pleading standard for alleging organizational standing at the motion
6 to dismiss stage. Amici thus have a strong interest in participating in this case and
7 describing the importance of fair housing organizations to enforcing the Fair Housing Act
8 and setting forth the proper pleading standards that apply to fair housing organizations for
9 alleging organizational standing.

10 **STANDARD OF REVIEW**

11 Once a defendant has moved to dismiss for lack of subject matter jurisdiction, a
12 plaintiff bears the burden of establishing the Court's jurisdiction. *See Chandler v. State*
13 *Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). The plaintiff carries that
14 burden by putting forth "the manner and degree of evidence required" by whatever stage of
15 the litigation the case has reached. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992);
16 *Washington v. Trump*, 847 F.3d 1151, 1159 (9th Cir. 2017). "At the pleading stage, general
17 factual allegations of injury resulting from the defendant's conduct may suffice, for on a
18 motion to dismiss [courts] 'presum[e] that general allegations embrace those specific facts
19 that are necessary to support the claim.'" *Lujan*, 504 U.S. at 561 (quoting *Lujan v. National*
20 *Wildlife Federation*, 497 U.S. 871, 883-889 (1990)); *see also Doe v. Holy See*, 557 F.3d
21 1066, 1073 (9th Cir. 2009) (when a motion to dismiss attacks subject-matter jurisdiction on
22 the face of the complaint, the court assumes the factual allegations in the complaint are true
23 and draws all reasonable inferences in the plaintiff's favor).) "In many cases the standing
24 question can be answered chiefly by comparing the allegations of the particular complaint to
25 those made in prior standing cases." *Allen v. Wright*, 468 U.S. 737, 751-752 (1984)

ARGUMENT

I. THE FAIR HOUSING ACT PROVIDES FOR ENFORCEMENT OF THE FAIR HOUSING ACT THROUGH FAIR HOUSING ORGANIZATIONS AND ORGANIZATIONS HAVE AN ESSENTIAL AND CRITICAL ROLE IN THE ENFORCEMENT OF THE FAIR HOUSING ACT

The primary purpose of fair housing organizations such as Amici and Project Sentinel is “to help provide equal housing opportunities for people living within the targeted geographical area of the organization.” Teresa C. Hunter and Gary L. Fischer, *Fair Housing Testing – Uncovering Discriminatory Practices*, 28 Creighton L. Rev. 1127,1131 (1995). Fair housing organizations typically engage in several different activities consistent with their mission including: “(1) educating the public regarding fair housing laws; (2) counseling individuals who believe they may have been the subject of unlawful discrimination; (3) receiving and investigating complaints regarding housing discrimination; and (4) referring appropriate cases to conciliation, attorneys, or enforcement agencies for resolution.” *Id.* at 1131-32.

The Fair Housing Act itself provides for its enforcement through fair housing organizations. The Fair Housing Act allows for civil actions by “aggrieved persons.” The Fair Housing Act defines an aggrieved person as “any person who has been injured by a discriminatory housing practice,” and defines “person” to include “corporations,” “associations” and “unincorporated organizations.” 42 U.S.C. § 3602(d) (defining person); 42 U.S.C. § 3602(i)(1)(defining an “aggrieved person as “any person who (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such persons will be injured by a discriminatory housing practice that is about to occur”); 42 U.S.C. § 3613(a)(“an aggrieved person may commence a civil action . . .”). The Act thus provides for enforcement actions by organizations such as Amici and Project Sentinel, non-profit corporations. *See Alexander v. Riga*, 208 F.3d 419, 427 (3d Cir. 2000) (fair housing organization was an “aggrieved person” under the Act). In bringing such actions, fair housing organizations act as “private attorneys general in vindicating a policy Congress considered to be of the highest priority.” *Trafficante v. Metropolitan Life Ins. Co.*, 409

1 U.S. 205, 211 (1972).

2 Fair housing organizations have been at the forefront of educating the community
 3 about fair housing and rooting out housing discrimination for nearly 50 years. Private non-
 4 profit fair housing organizations process and investigate the largest number of fair housing
 5 complaints in the country. In 2016, fair housing organizations investigated 70 percent of all
 6 fair housing complaints filed in the United States, which is almost twice the number of
 7 complaints filed with all federal, state, and local government agencies combined, even
 8 though non-profit organizations have far fewer resources. National Fair Housing Alliance,
 9 *The Case for Fair Housing: 2017 Fair Housing Trends Report*, at 50 (2017)(hereinafter
 10 “NFHA Trends Report”). Fair housing organizations are also effective in enforcing the Fair
 11 Housing Act. According to a 2011 study commissioned by the Department of Housing and
 12 Urban Development (HUD), 71 percent of fair housing cases filed with HUD in which a fair
 13 housing organization is a complainant or co-complainant result in conciliation or a finding
 14 of reasonable cause, as opposed to 37 percent of cases not referred to HUD by a fair housing
 15 organization. DB Consulting Group, Inc., *Study of the Fair Housing Initiatives Program*, at
 16 55 (2011).

17 With knowledge about the communities they serve, fair housing organizations are
 18 able to discern the modes and targets of discrimination in their local communities. Housing
 19 discrimination has changed from blatant discrimination to less easily detectable
 20 discrimination that requires more sophisticated investigations to detect. HUD, *Housing*
 21 *Discrimination Against Racial and Ethnic Minorities 2012: Executive Summary*, at 1-2
 22 (June 2013). Nevertheless, housing discrimination remains pervasive through actions such
 23 as offering different terms of lease or sale, steering, and misrepresentations about housing
 24 availability. Such subtle forms of discrimination make it impossible for an individual to
 25 recognize that they were treated differently because of a protected characteristic. Fair
 26 housing organizations, however, employ effective investigative techniques that uncover
 27 both large scale and less obvious forms of discrimination that would otherwise go
 28 undiscovered. For example, fair housing organizations employ civil rights testing, an

investigatory tool where individuals pose as homeseekers to determine whether housing providers are treating individuals differently based on a protected characteristic. Testing has been recognized as the most effective way to detect more insidious forms of housing discrimination. NFHA Trends Report, *supra*, at 51.

Recognizing the importance of fair housing organizations to assisting the community in understanding rights and responsibilities under the Fair Housing Act and fostering compliance with Fair Housing Act, in 1987 Congress created the Fair Housing Initiatives Program (FHIP). *See* 24 C.F.R. Part 125 (regulations implementing the Fair Housing Initiatives Program). FHIP is a competitive grant program that provides funding to fair housing organizations to counteract discrimination in the rental, sales, lending and insurance markets through education and outreach and enforcement grants. “FHIP funding is a critical component of the U.S. civil rights enforcement infrastructure.” DB Consulting Group, Inc., *supra*, at iii.

The importance of fair housing organizations to the education of the public and the housing, lending and insurance industries regarding their rights and responsibilities under the Fair Housing Act and its effective enforcement cannot be understated. As the leading legal commentator on fair housing noted:

Housing suppliers simply behave differently if they are operating in an area with an active fair housing organization that is engaged in extensive testing and general compliance monitoring. In addition, local organizations can make a vital contribution to the public's understanding of and support for the concept of fair housing; in the long run, this may be more important than litigation in eradicating housing discrimination. As important as these non-litigation strategies are, however, they generally require at least the threat of effective litigation to back them up. Therefore, the key to effective fair housing enforcement in a given area has usually been the existence of a vigorous private organization that can support litigation.

Robert G. Schwemm, *Private Enforcement of the Fair Housing Act*, 6 Yale L. & Pol. Rev. 375, 383 (1988).

1 **II. PROJECT SENTINEL MEETS THE PLEADING STANDARD FOR**
 2 **ALLEGING ORGANIZATIONAL STANDING**

3 **A. UNDER *HAVENS* AND *FAIR HOUSING OF MARIN*,**
 4 **STANDING IS ESTABLISHED BY FRUSTRATION OF AN**
ORGANIZATION’S MISSION AND THE DIVERSION OF ITS
SCARCE RESOURCES

5 In enacting the Fair Housing Act, Congress intended to define standing as broadly as
 6 permitted by Article III of the Constitution. *Trafficante*, 409 U.S. 205, 209 (1972). The sole
 7 requirement for standing to sue under the Fair Housing Act “is Article III minima injury in
 8 fact: that the plaintiff allege that as a result of the defendant’s actions he suffered a ‘distinct
 9 and palpable injury.’” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). Under
 10 *Havens*, a fair housing organization establishes standing when it suffers “a concrete and
 11 demonstrable injury with a consequent drain on the organization’s resources” or an
 12 impairment in its non-economic interest in encouraging open housing. *Id.* at 370.

13 In *Havens*, the plaintiffs sued a realty company and one of its employees for steering
 14 African-American home seekers. The plaintiffs included a fair housing organization,
 15 Housing Opportunities Made Equal (“HOME”). HOME’s mission was to make equal
 16 opportunity housing a reality. *Id.* at 368. Just as is true of Project Sentinel, HOME’s
 17 activities “included the operation of a housing counseling service and the investigation and
 18 referral of complaints concerning housing discrimination.” *Id.* Similarly, just as occurred
 19 here, HOME had conducted an investigation of defendants’ real estate practices and sued
 20 after the investigation revealed discriminatory conduct.

21 HOME’s complaint alleged that it had been “frustrated by defendants’ racial steering
 22 practices in its efforts to assist equal access to housing through counseling and other referral
 23 services” and “had to devote significant resources to identify and counteract the defendant’s
 24 racially discriminatory steering practices.” *Id.* The Court concluded that if the allegations
 25 were true, there was no doubt that the organization suffered injury in fact:

26 In determining whether HOME has standing under the Fair Housing Act, we
 27 conduct the same inquiry as in the case of an individual: Has the plaintiff
 28 “‘alleged such a personal stake in the outcome of the controversy’ as to
 warrant his invocation of federal-court jurisdiction”

1 *Id.* at 378-79 (citations omitted).

2 Under this test, standing clearly existed:

3 If, as broadly alleged, petitioners’ steering practices have perceptibly impaired
 4 HOME’s ability to provide counseling and referral services for low- and
 5 moderate-income homeseekers, there can be no question that the organization
 6 has suffered injury in fact. Such a concrete and demonstrable injury to the
 organization’s activities—with the consequent drain on the organization’s
 resources—constitutes far more than simply a setback to the organization’s
 abstract social interests.

7 *Id.* at 379.

8 In *Fair Housing of Marin v. Combs*, the Ninth Circuit followed *Havens* and held that
 9 a fair housing organization has standing to sue under the Fair Housing Act. *Fair Hous. of*
 10 *Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002). The defendant challenged Fair
 11 Housing of Marin’s standing both at the motion to dismiss stage and on appeal after the
 12 district court entered a default judgment against the defendant for discovery misconduct. *Id.*
 13 at 902. Just as has occurred here, Fair Housing of Marin had received complaints of racial
 14 discrimination, conducted an investigation and brought a lawsuit after the investigation
 15 indicated that the defendant discriminated. *Id.* Just like Project Sentinel, Fair Housing of
 16 Marin’s mission is to promote equal housing opportunities. *Id.* at 902. Fair Housing of
 17 Marin, similar to Project Sentinel, alleged in its complaint that, “as a result of defendant’s
 18 discriminatory practices, it has ‘suffered injury to its ability to carry out its purposes ...[and]
 19 economic losses in staff pay, in funds expended in support of volunteer services, and in the
 20 inability to undertake other efforts to end unlawful housing practices.’”¹ *Id.* at 905. The
 21 district court held that “fairly construed, [Fair Housing of Marin] complains that defendant’s
 22 discrimination against African Americans has caused it to suffer injury to its ability to
 23 provide outreach and education (i.e., counseling).” *Id.*

24 ¹ The allegations of the complaint in *Fair Housing of Marin* were taken as true as a result of the
 25 default. See *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (“The general rule of
 26 law is that upon default the factual allegations of the complaint, except those relating to the amount
 of damages, will be taken as true.”) (citing *Pope v. United States*, 323 U.S. 1, 12 (1944)).

1 The Ninth Circuit also found that the record supported the district court's finding that
 2 Fair Housing of Marin's resources were diverted to investigating and other efforts to
 3 counteract the discrimination. *Id.* Because the appeal challenged Fair Housing of Marin's
 4 standing after judgment and Fair Housing of Marin was required to offer proof of its
 5 standing at that stage of the proceedings, the court noted that the district court found that
 6 Fair Housing of Marin incurred \$14,217 in diversion of resources damages and \$16,317 in
 7 frustration of mission damages. *Id.* The Court concluded that, "Fair Housing of Marin has
 8 direct standing to sue because it showed a drain on its resources from both a diversion of its
 9 resources and frustration of its mission." *Id.*; *see also El Rescate Legal Services, Inc. v.*
 10 *Executive Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1991) (immigrant
 11 rights organizations established standing by alleging that the defendant's policy frustrated
 12 their goals and required them "to expend resources in representing clients they otherwise
 13 would spend in other ways.").

14 **B. UNDER *PACIFIC PROPERTIES*, AN ORGANIZATION ESTABLISHES**
 15 **STANDING AT THE MOTION TO DISMISS STAGE BY PLEADING**
 16 **FRUSTRATION OF ITS MISSION AND A DIVERSION OF ITS**
RESOURCES TO COMBAT THE DISCRIMINATION AT ISSUE

17 In *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004), the Ninth
 18 Circuit set forth the pleading standard for pleading organizational standing at the motion to
 19 dismiss stage. Under *Havens* and *Fair Housing of Marin*, the Ninth Circuit held that "an
 20 organization may satisfy the Article III requirement of injury in fact if it can demonstrate:
 21 (1) frustration of its organizational mission; and (2) diversion of its resources to combat the
 22 particular housing discrimination in question." *Id.* (citing *Fair Housing of Marin*, 285 F.3d
 23 at 905). In *Pacific Properties*, a disability rights organization, Disability Rights Action
 24 Committee (DRAC), conducted an investigation of multifamily properties to determine if
 25 they met the accessibility requirements of the Fair Housing Act. 385 F.3d at 1099. The
 26 Ninth Circuit held the plaintiff organization met both prongs of the test for standing at the
 27 motion to dismiss stage. *Id.* at 1105-6.

28 First, the Ninth Circuit held that the organization met the test for frustration of

1 mission at the motion to dismiss stage. DRAC alleged that it is a non-profit corporation
 2 "organized with the principal purpose of helping to eliminate discrimination against
 3 individuals with disabilities by ensuring compliance with laws intended to provide access to
 4 housing[.]" *Id.* at 1105. The Ninth Circuit held that DRAC satisfied the requirements for
 5 pleading frustration of mission at the motion to dismiss stage because "[a]ny violation of the
 6 FHAA would therefore constitute a 'frustration of [DRAC's] mission'" and DRAC had
 7 alleged violations of the FHAA in its complaint. *Id.*

8 Second, the court held that DRAC satisfied the pleading standard for pleading
 9 diversion of resources. The Ninth Circuit noted:

10 DRAC specifically stated in its complaint that "in order to monitor the
 11 violations and educate the public regarding the discrimination at issue, DRAC
 12 has had (and, until the discrimination is corrected, will continue) to divert its
 13 scarce resources from other efforts to promote awareness of--and compliance
 with--federal and state accessibility laws and to benefit the disabled
 community in other ways (for example, DRAC's efforts to free disabled
 persons from nursing homes.)[.]"

14 *Id.* Because courts "presume that 'general allegations embrace those specific facts that are
 15 necessary to support a claim,'" *id.* at 1106 (quoting *Lujan*, 497 U.S. at 889), the Ninth
 16 Circuit concluded that DRAC's allegations were sufficient to constitute a showing of
 17 diversion of resources at the motion to dismiss stage. *Id.*

18 Following *Pacific Properties*, district courts in California have consistently held that
 19 fair housing organizations meet the pleading standard for organizational standing by broadly
 20 alleging frustration of mission and diversion of resources. *Nat'l Fair Hous. Alliance v. A.G.*
 21 *Spanos Constr., Inc.*, 542 F. Supp. 2d 1054, 1063-64 (N.D. Cal. 2008) (holding that a fair
 22 housing organization met the pleading standard for frustration of mission by alleging that
 23 defendants "'have forced Plaintiffs to divert significant and scarce resources to identify,
 24 investigate, and counteract the [] Defendants' discriminatory practice and such practices
 25 have frustrated Plaintiffs' other efforts against discrimination.'"); *Thomas v. Hous. Auth. of*
 26 *L.A.*, 2005 U.S. Dist. LEXIS 46427 at *53-55 (C.D. Cal. June 2, 2005) (fair housing
 27 organization had standing under the FHA because the organization alleged that "defendants'
 28 conduct has 'frustrated the mission of [the organization], . . . caused [the organization] to

divert its resources, [and] caus[ed] it to suffer economic losses in staff pay, and in the inability to undertake other efforts to end unlawful housing practices.’’); *Hous. Rights Ctr., Inc. v. Moskowitz*, 2004 U.S. Dist. LEXIS 28885 at *4-6 (C.D. Cal. Sept. 20, 2004) (holding that fair housing organization established standing to challenge racial and familial status discrimination in violation of the FHA by alleging that organization’s mission was to ensure equal opportunity in housing and organization devoted resources to investigating defendant’s practices including surveying and interviewing tenants).²

C. PROJECT SENTINEL PLED FACTS ESTABLISHING THAT IT HAS ORGANIZATIONAL STANDING AT THE MOTION TO DISMISS STAGE

Project Sentinel meets the pleading standard for alleging organizational standing at the motion to dismiss stage under *Fair Housing of Marin* and *Pacific Properties*.

First, Project Sentinel has alleged frustration of its mission. Similar to Fair Housing of Marin, Project Sentinel’s mission “includes the promotion of equal opportunity in rental housing and the elimination of all forms of housing discrimination.” Cf. (Compl. ¶ 12.) with *Fair Hous. of Marin*, 285 F.3d at 902 (plaintiff’s mission was to promote equal housing opportunities). Just as in *Pacific Properties*, any violation of the Fair Housing Act is a direct conflict with Project Sentinel’s mission to ensure equal opportunity in housing and constitutes a frustration of Project Sentinel’s mission. *See Pac. Props. & Dev. Corp.*, 358

² District courts in California have also consistently held that other types of organizations have organizational standing based on similar allegations. *Comm. for Immigrant Rights v. County of Sonoma*, 644 F. Supp. 2d 1177, 1195 (N.D. Cal. 2009) (immigrant rights organization had standing to sue for civil rights violations based on unlawful immigration enforcement policies because its “mission of opposing anti-immigrant policies is frustrated as a result of defendants’ actions, and that the Committee has diverted resources to combat defendants’ policies”); *Comm. Concerning Cmty. Improvement v. City of Modesto*, 2004 U.S. Dist. LEXIS 31022 at *20-22 (E.D. Cal. 2004) (community organization met the pleading standard for diversion of resources by alleging that community organization’s resources were diverted from efforts to improve the neighborhood to efforts to call attention to the lack of municipal resources and therefore had standing to challenge the lack of municipal resources under the FHA and other civil rights laws); *Santiago v. City of L.A.*, 2016 U.S. Dist. LEXIS 172682 at *20-22 (C.D. Cal. Nov. 17, 2016) (organization devoted to the legalization of street vending had standing to challenge illegal seizures and confiscations of personal property because it diverted resources to assist members who had been subject to illegal seizures and confiscations rather than other aspects of its organizational mission).

1 F.3d at 1105.

2 Second, Project Sentinel pled that it was forced to divert its resources to identify and
3 counteract the discrimination. Similar to *Pacific Properties*, Project Sentinel alleged that it
4 had to divert its scarce resources from other efforts to promote fair housing to activities to
5 identify and counteract the discrimination such as an investigation. Cf. Compl. ¶¶ 81 (“As a
6 result of Defendants’ discriminatory activities, Project Sentinel was forced to invest
7 significant financial and staff resources into investigating the subject property”) and ¶ 82
8 (“Defendants’ discriminatory conduct forced Project Sentinel to divert its scarce resources
9 away from other programs and activities it would have undertaken, such as counseling and
10 referral, educational programs, and outreach, to instead identify and counteract Defendants’
11 unlawful housing practices.”) with *Pac. Props. & Dev. Corp.*, 358 F.3d at 1105
12 (organization forced to divert its scarce resources from other efforts promote compliance
13 and awareness of accessibility laws to monitoring the defendants’ violations); *Allen*, 468
14 U.S. at 751-752.(the standing question can be answered chiefly by comparing the
15 allegations of the particular complaint to those made in prior standing cases).

16 Just as in *Havens* and *Fair Housing of Marin*, Project Sentinel pled that the diversion
17 of resources impaired its ability to provide counseling and referral services. Cf. Compl. ¶ 82
18 (“Defendants’ discriminatory practices perceptibly impaired Project Sentinel’s ability to
19 provide counseling and referral services for home seekers by requiring it to instead devote
20 resources to specific activities and programs to counteract Defendants’ discriminatory
21 housing practices.”) with *Havens*, 455 U.S. at 372 (“If, as broadly alleged, petitioners’
22 steering practices have perceptibly impaired HOME’s ability to provide counseling and
23 referral services for low- and moderate-income homeseekers, there can be no question that
24 the organization has suffered injury in fact.”) and *Fair Housing of Marin*, 285 F.3d at 905
25 (noting that the district court found that the fair housing organization “complains that
26 defendant's discrimination against African Americans has caused it to suffer injury to its
27 ability to provide outreach and education (i.e., counseling).”).

28 Project Sentinel thus has pled facts supporting organizational standing under *Havens*

1 at pleading stage.

2 **D. DEFENDANTS' ARGUMENTS OPPOSING STANDING LACK MERIT**

3 **1. Activities Undertaken to Counteract Discrimination Need Not Be Outside** 4 **the Organizational Mission to Properly Allege Frustration of Mission**

5 Defendants make two main arguments opposing Project Sentinel's standing. Both of
6 Defendants' arguments lack merit.

7 Defendants argue that actions undertaken by a fair housing organization to counteract
8 discrimination must be outside of the organizational mission to properly plead frustration of
9 mission at the pleading stage. However, in the Ninth Circuit, the only pleading requirement
10 to properly allege frustration of mission of a fair housing organization's mission to promote
11 equal housing opportunity is an allegation of a violation of the Fair Housing Act. *See Pac.*
12 *Props. & Dev. Corp.*, 358 F.3d at 1105. Project Sentinel's mission is to promote equal
13 opportunity in housing, it alleged violations of the Fair Housing Act and thereby properly
14 pled frustration of mission at the pleading stage.

15 As a recent district court noted, Defendants' argument that activities undertaken to
16 counteract discrimination must be outside an organization's mission "'borders both on the
17 offensive and absurd.'" *Nat'l Fair Hous. Alliance v. Travelers Indem. Co.*, 2017 U.S. Dist.
18 LEXIS 132899 at *17 (D.D.C. Aug. 21, 2017) (quoting *National Fair Hous. Alliance, Inc.*
19 *v. Prudential Ins. Co. of Am.*, 208 F. Supp. 2d 46, 53-54 (D.D.C. 2002)). "Nothing in the
20 FHA, standing jurisprudence, or common sense supports [Defendants'] position." *Travelers*
21 *Indem. Co.*, 2017 U.S. Dist. LEXIS 132899 at *17. In nearly all cases in which an
22 organization has been held to have standing, the organization's activities that demonstrate
23 standing are consistent with the mission of promoting fair housing. *See, e.g., Havens*, 455
24 U.S. at 368; *Fair Housing of Marin*, 385 F.3d at 905; *Fair Hous. Council v. Roommate.com,*
25 *LLC*, 666 F.3d 1216, 1219 (9th Cir. Cal. 2012); *Nat'l Fair Hous. Alliance v. A.G. Spanos*
26 *Constr., Inc.*, 542 F. Supp. 2d at 1063-64; *Thomas*, 2005 U.S. Dist. LEXIS 46427 at *53-55;
27 *Moskowitz*, 2004 U.S. Dist. LEXIS 28885 at *4-6; *id.*

1 **2. Fair Housing Organizations Are Not Required to Prove or Quantify**
 2 **Significant Diversion of Resources at the Pleading Stage**

3 Defendants next argue that Project Sentinel must quantify its diversion of resources
 4 and prove a significant diversion of resources at the pleading stage. This argument fails as a
 5 matter of law. To establish standing, a plaintiff must put forth the degree of evidence
 6 required by whatever stage of the litigation the case has reached. *Lujan*, 504 U.S. at 561;
 7 *Washington v. Trump*, 847 F.3d at 1159. In the Ninth Circuit, a fair housing organization
 8 meets the pleading standard by alleging that it had to divert its scarce resources from other
 9 efforts to promote awareness and compliance with fair housing laws to efforts to identify
 10 and counteract the defendant's fair housing violations. *Pac. Props. & Dev. Corp.*, 358 F.3d
 11 at 1105. Project Sentinel met the pleading standard by alleging that it was forced to divert
 12 resources from its other programs and activities such as counseling to activities to identify
 13 and counteract the defendant's discrimination

14 It is true that in *Fair Housing of Marin*, the Ninth Circuit noted that the plaintiff fair
 15 housing organization was awarded damages for diversion of resources. *Fair Hous. of*
 16 *Marin*, 285 F.3d at 905. But the defendant in *Fair Housing of Marin* challenged standing
 17 on appeal after a judgment had been entered against it. At the appeal stage of the
 18 proceeding, Fair Housing of Marin was required to *prove* diversion of its resources to
 19 activities to counteract the discrimination.

20 Nothing in the Ninth Circuit organizational standing jurisprudence suggests that a
 21 fair housing organization must prove and quantify significant diversion of resources at the
 22 motion to dismiss stage. Other district courts in California have **not** required fair housing
 23 organizations to quantify diversion of resources at the pleading stage but instead have held
 24 that fair housing organizations have standing at the pleading stage by broadly alleging
 25 diversion of resources. *Nat'l Fair Hous. Alliance v. A.G. Spanos Constr., Inc.*, 542 F. Supp.
 26 2d at 1063-64; *Thomas*, 2005 U.S. Dist. LEXIS 46427 at *53-55; *Moskowitz*, 2004 U.S.
 27 Dist. LEXIS 28885 at *4-6.

CONCLUSION

Amici urge the court to deny the motion to dismiss.

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Respectfully Submitted,

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